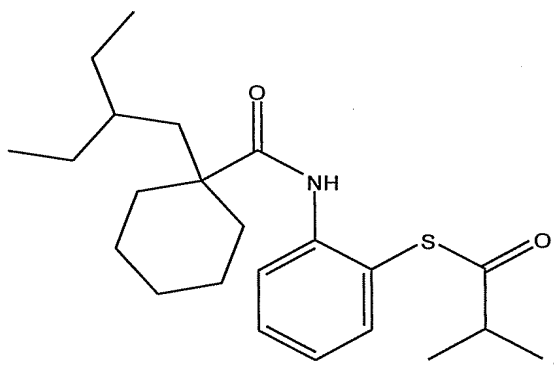


*REMARKS/ARGUMENTS**The Election of Species Requirement*

The Office Action asserts that pending claims 1-23 are generic to a plurality of patentably distinct species. In particular, the Office Action requires Applicants to elect one cholesteryl ester transfer protein inhibitor and one cardiovascular disorder.

Election of Species With Traverse

With respect to the two species election requirements, Applicants elect, with traverse, (i) the compound *S*-[2-([1-(2-ethylbutyl)cyclohexyl]carbonyl)amino)phenyl] 2-methylpropanethioate as the cholesteryl ester transfer protein inhibitor and (ii) hyperlipidemia as the cardiovascular disorder, for examination. As regards the compound of Formula I, *S*-[2-([1-(2-ethylbutyl)cyclohexyl]carbonyl)amino)phenyl] 2-methylpropanethioate has the following structure:



in which R is a substituted C₃₋₁₀ cycloalkyl group (e.g., 1-(2-ethylbutyl)cyclohexyl); X₁, X₂, X₃, and X₄ are each hydrogen; and Z is -YR₁, wherein Y is -CO- and R₁ is an unsubstituted branched C₁₋₁₀ alkyl group (e.g., i-propyl).

Claims 1-23 encompass the elected compound species, whereas claims 15 and 17-23 encompass the elected species of hyperlipidemia, such that claims 15 and 17-23 encompass the combination of the aforementioned species.

While Applicants have provided an election for the aforementioned species, the species election merely is intended to aid the Examiner in the search and examination of the present patent application. The election is by no means indicative of Applicants' willingness

to ultimately limit the claims of the present application to these species. As acknowledged in the Office Action, and consistent with an election of species requirement, Applicants are entitled to consideration of additional species encompassed by the generic claims upon a determination of the patentability of the elected species.

Discussion of Election Of Species Requirement

There are two criteria for proper requirement for restriction (including an election of species) between patentably distinct inventions (or species). The criteria are as follows:

- (i) the inventions (or species) must be independent or distinct as claimed, and
 - (ii) there must be a serious burden on the Examiner if restriction is not required.
- M.P.E.P. § 803 (emphasis added).

“If the search and examination of an entire application can be made without serious burden, the Examiner *must* examine it on the merits, *even though it includes claims to distinct or independent inventions*” (M.P.E.P. § 803, emphasis added). Significantly, M.P.E.P. § 802.02 clarifies that the term “restriction” in M.P.E.P. § 803 includes election of species requirements. As such, both of these criteria (i) and (ii) must be met for an election of species requirement to be proper.


Applicants respectfully submit that there would not be a serious burden on the Examiner if all of the subject matter of the pending claims was searched together. The nature of the claims, particularly the subject matter encompassed by the claims, is such that there would be no undue burden on the Examiner to consider all of the subject matter of the claims at the same time. Indeed, all of the claims recite a cholesteryl ester transfer protein inhibitor. Moreover, all of the method claims are directed to the treatment of a cardiovascular disorder with such cholesteryl ester transfer protein inhibitors. Accordingly, while Applicants do not in any way suggest that all of the claims, or all of the species encompassed by the claims, stand or fall together, there nevertheless would appear to be sufficient similarity between the species of the pending claims to allow for the search and examination of all of the subject matter of claims 1-23 at the same time without a “serious burden” being placed on the Examiner.

Conclusion

In view of the foregoing remarks, Applicants respectfully request withdrawal of the species restriction requirement, and respectfully submit that all species encompassed by claims 1-23 should be examined together.

If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned.

Respectfully submitted,



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